

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1723
91ST GENERAL ASSEMBLY

Reported from the Committee on Professional Registration and Licensing, April 23, 2002, with recommendation that the House Committee Substitute for House Bill No. 1723 Do Pass.

TED WEDEL, Chief Clerk

3716L.05C

AN ACT

To amend chapter 339, RSMo, by adding thereto eleven new sections relating to licensing home inspectors, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 339, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 339.900, 339.903, 339.906, 339.909, 339.912, 339.924, 339.927, 339.930,
3 339.933, 339.934, and 339.936, to read as follows:

339.900. 1. As used in sections 339.900 to 339.936, the following terms mean:

- 2 (1) "Commission", the Missouri home inspectors commission;
- 3 (2) "Component", a part of a system;
- 4 (3) "Home inspection", the process by which an inspector visually examines the
5 readily accessible systems and components of a home and describes such systems in writing
6 in accordance with the standards of practice established by the commission;
- 7 (4) "Home inspection report", a written opinion prepared for compensation and
8 issued for a home inspection. The report shall clearly describe and identify the inspected
9 systems, structures, or components of the dwelling, identify any visible major defects found
10 to be in need of immediate major repair, and include any recommendations for further
11 evaluation;
- 12 (5) "Home inspector", an individual who performs an independent, objective home
13 inspection for compensation;
- 14 (6) "Readily accessible", available for visual inspection without requiring the
15 movement of personal property, dismantling, destructive measures, or any action that
16 would likely involve risk to persons or property;
- 17 (7) "Residential building", a structure of one to four family dwelling units;

18 (8) "System", a combination of interacting or interdependent components
19 assembled to carry out one or more functions.

339.903. 1. No person shall act as a home inspector, or directly or indirectly engage
2 or assume to engage in the business of home inspection, or advertise or hold himself or
3 herself out as engaging in or conducting such business without first obtaining a license
4 issued by the Missouri home inspectors commission as provided in sections 339.900 to
5 339.936.

6 **2.** No license shall be issued pursuant to sections 339.900 to 339.936 to a
7 partnership, association, corporation, firm, or group.

8 **3.** Any person who is not state licensed pursuant to sections 339.900 to 339.936 may
9 assist a state-licensed home inspector in the performance of an inspection provided that the
10 person is personally supervised at the inspection site by a state-licensed inspector and any
11 inspection report rendered in connection with the inspection is reviewed and signed by the
12 state-licensed home inspector.

13 **4.** The provisions of sections 339.900 to 339.936 shall not be construed to require
14 a license for:

15 **(1)** Any person, partnership, association, or corporation who as owner performs
16 inspections of property owned by such person, partnership, association, or corporation;

17 **(2)** Any employee of a local, state, or federal agency who performs inspection
18 services within the scope of his or her employment;

19 **(3)** Any person providing the inspection or repair of two or less of the following:
20 heating system, cooling system, electrical system, plumbing system, foundation, siding,
21 roofing, masonry chimney, or the structural frame or other essential components or system
22 of a residential dwelling;

23 **(4)** A real estate broker, real estate salesperson, or real estate appraiser acting
24 within the scope of his or her license;

25 **(5)** Any person employed by or acting on behalf of a licensed insurance company
26 doing business in this state.

339.906. 1. There is hereby created within the division of professional registration
2 of the department of economic development the "Missouri Home Inspectors Commission",
3 which shall consist of seven members appointed by the governor with the advice and
4 consent of the senate, six of whom shall be home inspector members and one who shall be
5 a public member. Each member shall be a resident of this state and a registered voter for
6 a period of one year prior to the person's appointment. The public member shall have
7 never been engaged in the business of home inspection, real estate appraisal, real estate
8 sales, or making loans secured by real estate. The board shall elect from its membership

9 a president, vice president, and secretary-treasurer, each of whom shall be elected at the
10 times and serve for the terms as are determined by the commission, and each of whose
11 duties shall be prescribed by the commission.

12 2. The home inspector members initially appointed by the governor shall have
13 home inspection experience in the state of Missouri for not less than five years immediately
14 preceding their appointment, shall have completed at least one thousand home inspections
15 for compensation, and shall be designated members in good standing of a nationally
16 recognized home inspector association. Successor home inspector members of the
17 commission shall be appointed from the registry of state-licensed home inspectors. The
18 governor shall not exclude a state-licensed home inspector from appointment as a successor
19 inspector member of the commission by virtue of membership or lack of membership of
20 the state-licensed home inspector in any particular home inspector association.

21 3. Of the initial members appointed, two members shall be appointed for one-year
22 terms, two members for two-year terms, and three members for three-year terms; provided
23 that the initial public member shall be appointed for a three-year term. All successor
24 members shall be appointed for three-year terms. All members shall serve until their
25 successors have been appointed and qualified. No more than four members of the
26 commission shall be members of the same political party. Vacancies occurring in the
27 membership of the commission for any reason shall be filled by appointment by the
28 governor for the unexpired term. Upon expiration of their terms, members of the
29 commission shall continue to hold office until the appointment and qualification of their
30 successors. The governor may remove a member for cause. The executive director of the
31 commission shall be employed by the division of professional registration.

32 4. The commission shall meet at least once each calendar year to conduct its
33 business. The executive director shall give each member notice of the time and place of
34 each meeting of the commission at least ten days before the scheduled date of the meeting,
35 and notice of any special meeting shall state the specific matters to be considered in the
36 special meeting which is not a regular meeting. A quorum of the commission shall consist
37 of four members.

38 5. Each member of the commission shall be entitled to a per diem allowance of up
39 to seventy dollars for each meeting day or part of a day of the commission at which the
40 member is present and shall be entitled to reimbursement of the member's actual and
41 necessary expenses incurred in the discharge of the member's official duties. Each member
42 of the commission shall be entitled to reimbursement of travel expenses necessarily
43 incurred in attending meetings of the commission.

339.909. 1. The commission shall have the following powers and duties:

2 **(1) To adopt rules in accordance with the provisions of chapter 536, RSMo, to:**

3 **(a) Establish the qualifications for the licensing of home inspectors as the**
4 **commission deems necessary for the public interest;**

5 **(b) Establish an application process for persons seeking a license as a home**
6 **inspector;**

7 **(c) Establish and publish standards of professional and ethical conduct for home**
8 **inspectors that will meet or exceed those set by the American Society of Home Inspectors**
9 **or other national associations with comparable standards of professional and ethical**
10 **conduct of home inspectors; and**

11 **(d) Establish such reasonable rules as deemed necessary or desirable by the**
12 **commission to carry out and enforce the provisions of sections 339.900 to 339.936;**

13 **(2) To establish rules regarding hearings on any matter under the provisions of**
14 **sections 339.900 to 339.936;**

15 **(3) To establish administrative procedures for processing applications and issuing**
16 **licenses of state-licensed home inspectors and for conducting disciplinary proceedings**
17 **pursuant to the provisions of sections 339.900 to 339.936. The commission shall have**
18 **authority to determine who meets the criteria for licensure and shall have authority to**
19 **renew, censure, suspend, or revoke licenses;**

20 **(4) To maintain and publish a registry of names and addresses of state-licensed**
21 **home inspectors;**

22 **(5) To adopt rules for establishing approved courses of instruction that prescribe**
23 **and define the subjects related to home inspection that will satisfy the qualification**
24 **requirements for licensure. The commission shall establish and publish a list of approved**
25 **education program providers;**

26 **(6) To prescribe the form and content of examinations to determine the**
27 **qualifications of persons who apply for licenses to engage in home inspection. The**
28 **commission shall contract with a testing service to provide and conduct such examinations;**

29 **(7) To define by rule the continuing education requirements for the renewal of**
30 **licensure that will meet the requirements of sections 339.900 to 339.936;**

31 **(8) To set the amount of the fees authorized by sections 339.900 to 339.936 and**
32 **required by rules promulgated pursuant to section 536.021, RSMo. The fees shall be set**
33 **at a level to produce revenue that does not substantially exceed the cost and expense of**
34 **administering this chapter;**

35 **(9) To establish rules by which the commission may issue a license on a reciprocal**
36 **basis with other states without examination to a nonresident who is licensed or certified,**
37 **and in good standing in another state under standards that are substantially equal to those**

38 established by the commission and in sections 339.900 to 339.936. Fees collected shall be
39 the same as those required for state licensure of resident home inspectors;

40 (10) To perform such other functions and duties as may be necessary to carry out
41 the provisions of sections 339.900 to 339.936.

42 2. No rule or portion of a rule promulgated under the authority of this section shall
43 become effective unless it has been promulgated pursuant to chapter 536, RSMo.

339.912. 1. Any person desiring to obtain licensure as a state-licensed home
2 inspector shall make written application to the commission on such forms as are prescribed
3 by the commission setting forth the applicant's qualifications for licensure and present to
4 the commission satisfactory proof that the person is of good moral character and bears a
5 good reputation for honesty, integrity, and fair dealing.

6 2. There is hereby created in the state treasury the "Missouri Home Inspectors
7 Fund", which shall consist of moneys collected pursuant to sections 339.900 to 339.936.
8 The fund shall be administered by the division of professional registration, which shall
9 collect and transfer the fees authorized in sections 339.900 to 339.936 to the director of
10 revenue for deposit in the fund. Moneys in the fund shall be used solely for the purposes
11 of the Missouri home inspectors commission as authorized in sections 339.900 to 339.936.

12 3. Notwithstanding the provisions of section 33.080, RSMo, moneys in the Missouri
13 home inspectors fund shall not revert to the credit of the general revenue fund at the end
14 of the biennium and any appropriations made to the fund shall not lapse. The state
15 treasurer shall invest moneys in the fund in the same manner as other funds are invested.
16 Any interest and moneys earned on such investments shall be credited to the fund.

17 4. At the time of filing an application for licensure, each applicant shall sign a
18 pledge to comply with the standards set forth by the commission in sections 339.900 to
19 339.936. The applicant shall state that the applicant understands the types of misconduct
20 for which disciplinary proceedings may be initiated against a state-licensed home inspector.

21 5. Each applicant for licensure must demonstrate the knowledge and competency
22 necessary to perform inspections of residential real estate as the commission may prescribe
23 by rule and as required by sections 339.900 to 339.936. The commission shall issue state
24 licensure as a state-licensed home inspector upon assurance that an applicant:

25 (1) Is of good moral character;

26 (2) Has successfully completed a commission approved classroom training program
27 of not less than eighty classroom hours or has completed at least eighty home inspections
28 under the direct supervision of a licensed home inspector;

29 (3) Has passed a psychometrically valid written or electronic competency
30 examination offered or approved by the commission or as provided for in sections 339.900

31 to 339.936; and

32 (4) Has paid the appropriate fee set by the commission.

33 6. If an applicant is not licensed within three years after passing an examination
34 given pursuant to sections 339.900 to 339.936, the applicant shall be required to retake the
35 examination prior to state licensure.

36 7. An applicant who fails an examination taken pursuant to sections 339.900 to
37 339.936 may apply for reexamination by submitting an application with the appropriate
38 examination fee during the time frame defined by rule regarding procedures for
39 reexamination.

40 8. The commission shall also make such investigation as is required to verify such
41 qualifications. If the results of the investigation are satisfactory to the commission and the
42 applicant is otherwise qualified, the commission shall issue to the applicant a license
43 authorizing the applicant to act as a state-licensed home inspector in Missouri. If the
44 results of the investigation are unsatisfactory, action on the application may be deferred
45 pending a hearing before the commission.

46 9. Each applicant shall furnish evidence of an errors and omissions insurance
47 policy of at least two hundred fifty thousand dollars per claim with five hundred thousand
48 dollars in the aggregate. The home inspector shall maintain proof of such coverage for a
49 period of twelve months following the date of inspection. If the home inspector is
50 terminated from employment or ceases to be in the business of performing home
51 inspections, the home inspector shall provide proof of extended reporting period insurance
52 coverage for a period of twelve months following the date of the final inspection. Any
53 claim or legal action arising out of the home inspection must be initiated within twelve
54 months from the date the inspection is performed pursuant to sections 339.900 to 339.936.
55 Home inspectors shall maintain general liability insurance coverage while in the business
56 of performing home inspections.

339.924. 1. The commission shall promulgate and adopt rules which prescribe and
2 define the subjects related to home inspection that will satisfy the qualification
3 requirements for licensure. The commission shall establish a list of approved education
4 program providers and may approve courses of instruction in an accredited college or
5 university related to the inspection of homes and such other areas deemed relevant by the
6 commission. Each provider shall submit application for approval each calendar year, and
7 shall maintain a record of attendance and satisfactory results for each program attendee.

8 2. In adopting rules pursuant to this section, the commission may give favorable
9 consideration to courses of instruction, seminars, and other home inspection education
10 courses and programs previously or hereafter developed by, or under the auspices of,

11 professional home inspection associations and utilized by those associations for purposes
12 of designation, licensure, or renewal of licensure of members of the association.

13 3. For purposes of licensure or renewal of licensure, the commission may establish
14 or approve credit for any of the following: courses of instruction, programs, teaching,
15 program development, and preparation of textbooks, articles, or other instructional
16 materials.

339.927. As a prerequisite of renewal of licensure, a state-licensed home inspector
2 shall present evidence satisfactory to the commission of having met the continuing
3 education requirements as required by the commission.

339.930. 1. The commission may refuse to issue or renew any license issued
2 pursuant to sections 339.900 to 339.936 for one or any combination of causes stated in
3 subsection 2 of this section. The commission shall notify the applicant in writing of the
4 reasons for the refusal and shall advise the applicant of the right to file a complaint with
5 the administrative hearing commission as provided by chapter 621, RSMo.

6 2. The commission may cause a complaint to be filed with the administrative
7 hearing commission as provided by chapter 621, RSMo, against any state-licensed home
8 inspector or any person who has failed to renew or has surrendered his or her license for
9 any one or any combination of the following causes:

10 (1) Procuring or attempting to procure a license pursuant to section 339.912 by
11 knowingly making a false statement, submitting false information, refusing to provide
12 complete information in response to a question in an application for licensure, or through
13 any form of fraud or misrepresentation;

14 (2) Failing to meet the minimum qualifications for licensure or renewal established
15 by sections 339.900 to 339.936;

16 (3) Paying money or other valuable consideration, other than as provided for by
17 section 339.912, to any member or employee of the commission to procure a license
18 pursuant to sections 339.900 to 339.936;

19 (4) The person has been finally adjudicated and found guilty, or entered a plea of
20 guilty or nolo contendere, in a criminal prosecution under the laws of any state or the
21 United States for any offense reasonably related to the qualifications, functions, or duties
22 of any profession licensed or regulated pursuant to sections 339.900 to 339.936, for any
23 offense of which an essential element is fraud, dishonesty, or an act of violence, regardless
24 of the imposition of sentence;

25 (5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or
26 misrepresentation in the performance of the functions or duties of any profession licensed
27 or regulated by sections 339.900 to 339.936;

- 28 (6) Violation of any of the standards for the development or communication of
29 home inspections as provided in or pursuant to sections 339.900 to 339.936;
- 30 (7) Failure or refusal without good cause to exercise reasonable diligence in
31 developing an inspection, preparing an inspection report, or communicating an inspection;
- 32 (8) Negligence or incompetence in developing an inspection, in preparing an
33 inspection report, or in communicating an inspection;
- 34 (9) Violating, assisting, or enabling any person to willfully disregard any of the
35 provisions of sections 339.900 to 339.936 or the rules of the commission for the
36 administration and enforcement of the provisions of sections 339.900 to 339.936;
- 37 (10) Accepting an inspection assignment when the employment itself is contingent
38 upon the inspector's reporting a predetermined analysis or opinion or where the fee to be
39 paid for the performance of the inspection assignment is contingent upon the opinion,
40 conclusion, or valuation reached or upon the consequences resulting from the inspection
41 assignment;
- 42 (11) Violating the confidential nature of governmental records to which the person
43 gained access through employment or engagement to perform an inspection assignment or
44 specialized inspection services for a governmental agency;
- 45 (12) Violating any term or condition of a license issued by the commission pursuant
46 to the authority of sections 339.900 to 339.936;
- 47 (13) Violation of any professional trust or confidence;
- 48 (14) Obtaining or attempting to obtain any fee, charge, tuition, or other
49 compensation by fraud, deception, or misrepresentation;
- 50 (15) Assisting or enabling any person to practice or offer to practice any profession
51 licensed or regulated by sections 339.900 to 339.936 who is not licensed and currently
52 eligible to practice pursuant to sections 339.900 to 339.936;
- 53 (16) Use of any advertisement or solicitation which is false, misleading, or deceptive
54 to the general public or persons to whom the advertisement or solicitation is primarily
55 directed;
- 56 (17) Disciplinary action against the holder of a license or other right to practice any
57 profession regulated pursuant to sections 339.900 to 339.936, imposed by another state,
58 territory, federal agency, or country upon grounds for which revocation or suspension is
59 authorized in this state.
- 60 3. After the filing of such complaint, the proceedings shall be conducted in
61 accordance with the provisions of chapter 621, RSMo. Upon a finding by the
62 administrative hearing commission that the grounds provided in subsection 2 of this
63 section for disciplinary action are met, the commission may, singly or in combination,

64 publicly censure or place the person named in the complaint on probation on such terms
65 and conditions as the commission deems appropriate for a period not to exceed five years,
66 or may suspend for a period not to exceed three years or revoke the license. The holder of
67 a license revoked pursuant to this section shall not obtain licensure as a state-licensed home
68 inspector for at least five years after the date of revocation.

69 4. Applicants for relicensure or reinstatement shall be required to successfully
70 complete the examination for original licensure required by section 339.921 as a condition
71 to reinstatement of licensure or relicensure subsequent to revocation.

339.933. State-licensed home inspectors shall retain originals or true copies of
2 contracts engaging an inspector's services for inspector assignments, specialized inspection
3 services, inspection reports, and supporting data assembled and formulated in preparing
4 inspection reports for two years. The period for retention of the records applicable to each
5 engagement of the services of the state-licensed home inspector shall run from the date of
6 the submission of the inspection report to the client. Such records shall be made available
7 by the state-licensed home inspector for inspection and copying by the commission on
8 reasonable notice to the state-licensed home inspector.

339.934. 1. Except as provided in subsection 2 of this section, sections 339.900 to
2 339.936 shall preempt any rule, regulation or order adopted by a political subdivision of
3 the state relating to the licensing or regulation of home inspectors or home inspection
4 businesses.

5 2. Sections 339.900 to 339.936 shall not affect:

6 (1) Local regulations relating to zoning requirements or occupational license taxes
7 pertaining to home inspectors or home inspection businesses; or

8 (2) Local regulations that do not relate to home inspection as performed by a
9 Missouri state-licensed home inspector, including regulations of those professions who
10 perform duties with a state-licensed home inspector.

339.936. Any person or corporation who knowingly violates any provision of
2 sections 339.900 to 339.936 is guilty of a class B misdemeanor. Any officer or agent of a
3 corporation, or member or agent of a partnership or association, who knowingly and
4 personally participates in or is an accessory to any violation of sections 339.900 to 339.936
5 is guilty of a class B misdemeanor. This section shall not be construed to release any
6 person from civil liability or criminal prosecution pursuant to any other law of this state.
7 The commission may cause a complaint to be filed for a violation of section 339.903 in any
8 court of competent jurisdiction, and perform such other acts as may be necessary to
9 enforce the provisions of sections 339.900 to 339.936.

Section B. The enactment of sections 339.900, 339.903, 339.906, 339.909, 339.912,

2 339.924, 339.927, 339.930, 339.933, 339.934, and 339.936 of section A of this act shall become
3 effective January 1, 2005.